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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

BLUE DOLPHIN ENTERTAINMENT
CO., LTD.,

Plaintiff and Respondent,

v.

GARY WALTERS et al.,

Defendants and Appellants.

B160041

(Los Angeles County
Super. Ct. No. BC251081)

APPEAL from a judgment of the Superior Court of Los Angeles County.
James C. Chalfant, Judge. Reversed and remanded.

Grakal, Root & Rosenthal and Richard M. Rosenthal for Defendants and
Appellants.

Law Offices of Michael C. Murphy and Michael C. Murphy for Plaintiff and
Respondent.

Gary Walters (Walters) and Walters Records, Inc. (WRI) appeal a default judgment in favor of respondent Blue Dolphin Entertainment Co., Ltd. (Blue Dolphin). Inter alia, Walters and WRI contend that the default judgment is defective because Blue Dolphin's pleading is factually deficient. We agree. On that basis, we reverse the default judgment and remand.

FACTUAL AND PROCEDURAL HISTORY

Blue Dolphin sued Walters and WRI for breach of oral contract, fraud and conversion. According to the complaint: In exchange for \$45,000, Walters and WRI orally agreed to grant to Blue Dolphin an exclusive license to sell and distribute the Live at Star Platz Club Hamburg recordings by the Beatles (the recordings) throughout Japan and North America. However, Walters and WRI never owned those rights. Blue Dolphin paid Walters and WRI \$45,000 and then spent over \$500,000 to proceed with the distribution and sale of the recordings.

Walters and WRI failed to respond to the complaint, and the clerk of the superior court entered their defaults. In connection with the default prove-up, Blue Dolphin president, Yasumi Takeuchi (Takeuchi), declared that Blue Dolphin had an oral contract with both Walters and WRI. She stated that while the contract with WRI was confirmed in writing, the contract with Walters was not. The written contract, which was attached to Takeuchi's declaration, purported to grant distribution rights from WRI to Blue Dolphin Entertainment Corp. (BDEC). The trial court entered judgment in the amount of \$463,680.47 plus costs.

This timely appeal followed.

STANDARD OF REVIEW

The factual sufficiency of a pleading and whether a default judgment was properly entered can be raised for the first time on appeal. (*Gore v. Witt* (1957) 149 Cal.App.2d 681, 686.) Appellate review of the sufficiency of a pleading is de novo. (See *Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 879.) "[W]e assume that the complaint's properly pleaded material allegations are true and give the complaint a

reasonable interpretation by reading it as a whole.” (*Moore v. Regents of University of California* (1990) 51 Cal.3d 120, 125.) Also, we accept as true all facts that may be implied or inferred from the facts that have been expressly alleged. (*Marshall v. Gibson, Dunn & Crutcher* (1995) 37 Cal.App.4th 1397, 1403.) But we will not assume the truth of contentions, deductions, or conclusions of law. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967.)

DISCUSSION

1. Factual sufficiency of the complaint.

a. Breach of oral contract.

The crux of Walters and WRI’s attack on the first cause of action is that the transfer of a copyright, including an exclusive license, is invalid unless it is in writing. (See 17 U.S.C. §§ 201(d)(1), 204(a); *Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 662.) We agree that the statute of frauds applies. (See *Mellencamp v. Riva Music Ltd.* (S.D.N.Y. 1988) 698 F.Supp. 1154, 1162 (*Mellencamp*) [holding that the statute of frauds applies to an oral agreement to make a transfer of a copyright as well as to an oral transfer of a copyright].)

The pleading is defective as to both Walters and WRI because it alleges oral agreements to transfer a copyright. On its face, the pleading demonstrates that it is barred by the statute of frauds.

Blue Dolphin argues that the statute of frauds was satisfied because it had a written agreement with WRI. However, the written contract was not alleged or attached as an exhibit to the pleading, and Blue Dolphin cited no law establishing that it can fix an otherwise defective pleading by way of materials submitted in support of a default prove up. Also, this argument does not address the statute of frauds defect as to Walters. Finally, the written agreement was between WRI and BDEC rather than Blue Dolphin. The record does not establish what relationship there is between Blue Dolphin and BDEC. We decline to speculate.

b. *Fraud.*

Walters and WRI assign infirmity to the second cause of action on the grounds that the alleged reliance was unreasonable as a matter of law because the agreement was not in writing. Once again, we agree.

It is axiomatic that for a fraud cause of action to stand, it must allege reasonable reliance. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) Apropos to this case, courts have held that it is unreasonable for a party to rely on promises made in an oral agreement that is governed by the statute of frauds. (See *Phillippe v. Shapell Industries* (1987) 43 Cal.3d 1247, 1260-1262 (*Phillippe*) [holding that it was unreasonable for a real estate broker to rely on an oral contract that was barred by the statute of frauds]; *Keely v. Price* (1972) 27 Cal.App.3d 209, 214 (*Keely*) [“Appellant contends that his action is not upon the invalid agreement, but is an action for damages for fraud, upon the theory that the oral promise to pay him a commission was made without any intention of performing it and for the purpose of inducing him to waive a written memorandum. If the law can be thus nullified by the transparent device of predicating a tort action upon the invalid oral promise on the ground that the promisor did not intend to perform it, then the section might just as well be stricken from the statute.”].)

Drawing on *Phillippe* and *Keely*, we conclude that Blue Dolphin failed to allege reasonable reliance, i.e., any reliance on an oral agreement barred by the statute of frauds was unreasonable. Equally relevant to our inquiry is consideration of the purpose of the statute of frauds, which is “‘to protect copyright holders from persons mistakenly or fraudulently claiming oral licenses.’ [Citation.]” (*Mellencamp, supra*, 698 F.Supp. at p. 1162.) That purpose could not be fulfilled if the statute of frauds could be circumvented by alleging a false promise.

c. *Conversion.*

This cause of action is premised on the fraud cause of action and therefore shares the same infirmity.

2. The other issues.

The pleading is defective, which is grounds for reversal. We need not reach Walters and WRI's other contentions. For Blue Dolphin to obtain relief, it will have to amend its pleading. If it does chose to amend, Walters and WRI will have an opportunity to respond.¹

DISPOSITION

The default judgment is reversed and remanded. Walters and WRI shall recover their costs on appeal.

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_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
NOTT

¹ On remand we do not foreclose Blue Dolphin from trying to plead around the statute of frauds by alleging that it is the same entity as BDEC. We have refrained from addressing Walters and WRI's standing argument because the identity of the parties to the alleged agreements is in dispute.